

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 06-54030

ROBERT McFARLAN JONES, AND
CHRIS ANN JONES,

Chapter 13

Judge Thomas J. Tucker

Debtors.

/

**ORDER DENYING, AS UNNECESSARY, DEBTOR'S MOTION TO
EXTEND THE AUTOMATIC STAY**

This case is before the Court on "Debtors' Motion To Extend The Automatic Stay Under 11 U.S.C. § 362(c)(3)(B)," filed on October 4, 2006 (Docket # 10). The Court must deny the motion because it is unnecessary. 11 U.S.C. § 362(c)(3) does not apply in this case, and thus the automatic stay will not terminate under that section.

Section 362(c)(3)(A) provides:

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) —

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

11 U.S.C. § 362(c)(3)(A). This provision does not apply to this case because Debtors did not have any case "pending" within the 1-year period before filing this case.

Debtors filed a voluntary petition for relief under Chapter 13 on October 2, 2006, initiating this case. This is Debtors' second bankruptcy case. Debtors filed their first case on April 23, 2004, Case No. 04-51936. An Order dismissing the prior case was filed on August 9,

2004 and entered on the docket on August 10, 2004, and the Trustee filed her final report on August 18, 2004. But for reasons unknown, the Clerk did not close the case until January 26, 2006.

The prior case was no longer “pending,” within the meaning of § 362(c)(3), after August 10, 2004, the date on which the Court entered its order dismissing the case. *See, e.g.*, Black’s Law Dictionary 1154 (7th ed. 1999)(“Pending” means: “Remaining undecided; awaiting decision (a pending case)”). And it was the order dismissing the prior case that terminated the automatic stay in that case, not the later, ministerial act of closing the case. *See* 11 U.S.C. § 362(c)(2)(B). Any delay by the Clerk in closing the case, therefore, did not keep the case “pending” in the sense in which that word is used in § 362(c)(3).

For these reasons, Debtor’s motion, while no doubt filed out of an abundance of caution, is not necessary. The stay will not terminate under § 362(c)(3)(A).

Accordingly,

IT IS ORDERED that “Debtors’ Motion To Extend The Automatic Stay Under 11 U.S.C. § 362(c)(3)(B)” (Docket # 10), is DENIED as unnecessary.

Date: October 6, 2006

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge